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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,786	01/05/2001	Joseph L. Hellerstein	YOR920000318US1	5258
7590	01/04/2005		EXAMINER	
William E. Lewis RYAN, MASON & LEWIS, LLP 90 Forest Avenue Locust Valley, NY 11560				NGUYEN BA, HOANG VU A
		ART UNIT	PAPER NUMBER	2122

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/755,786	HELLERSTEIN ET AL.	
	<b>Examiner</b> Hoang-Vu A Nguyen-Ba	<b>Art Unit</b> 2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 16 August 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-22 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

1. This action is responsive to the amendment filed August 16, 2004.
2. Claims 1-22 remain pending.

### *Response to Amendments*

3. Per Applicants' request, claims 1, 10, 21 and 22 have been amended.

### *Response to Argument(s)*

4. In response to Applicants' argument that claims 19 and 20 have not been addressed in the previous Office action, these claims are thus considered in paragraphs 11 and 13 of this Office action.
5. In view of Applicants' arguments that the identified features in claims 6, 7, 15 and 16 do have support in the written disclosure, the rejection of these claims under 35 U.S.C. § 112, first paragraph is hereby withdrawn.
6. In view of Applicants' amendments to claims 1 and 21 to point out that the software package preparation is capable of being based on features (i), (ii) and (iii), instead of being based on at least one of these three features, the rejection of these claims under 35 U.S.C. § 112, second paragraph is hereby withdrawn.

7. **Rejection of claims 1-4, 8-13, 17, 18, 21 and 22 under 35 U.S.C. § 102(b):**

- a. Applicants' argument:

“Applicants assert that it is not clear what reference AAPA refers to in the Office action. Further, as indicated above, claims 1, 10, 21 and 22 have been amended to recite that the software package preparation and customization is capable of being based on: (i) policy data indicating which of the one or more regions are candidates for receiving the software package; (ii) dependency information indicating requisites for a

service provided by the software package; and (iii) configuration information for each of the candidate regions. Applicants assert that independent claims 1, 10, 21 and 22 are patentable for at least these reasons.”

Examiner's response:

AAPA, i.e., Applicants' admitted prior art, refers to Figure 1 and associated discussion at pages 1-2 of Applicants' written disclosure. See Office action, paragraph 10.

For the preparation of the software package, policy data and configuration information have to be considered because of the plurality of distribution targets and dependency information has to be considered because of different software updates. These claimed features are expressly or implicitly anticipated by features shown in Figure 1 and associated discussion in Applicants' background of the invention.

b. Applicants' argument:

“Applicants assert that dependent claims 2-4, 8, 9, 11-13, 17 and 18 are patentable for at least the reasons independent claims 1 and 10, from which claims 2-4, 8, 9, 11-13, 17 and 18 depend, are patentable. Further, Applicants assert that dependent claims 2-4, 8, 9, 11-13, 17 and 18 recite patentable subject matter in their own right.”

Examiner's response:

Claims 2-4, 8, 9, 11-13, 17 and 18 are not patentable because they depend from base claims 1 and 10, which are anticipated by AAPA.

Furthermore, features recited in claims are also anticipated by AAPA. See Office action, paragraph 10.

8. **Rejection of claims 5 and 14 under 35 U.S.C. § 103(a):**

Applicants' arguments:

“Applicants assert that such claims are patentable for at least the reasons that independent claims 1 and 10, from which claims 5 and 14 depend, are patentable. Further, Applicants assert that dependent claims 5 and 14 recite patentable subject matter in their own right.”

Examiner's response:

Claims 5 and 14 are not patentable because they depend from base claims 1 and 10, which are anticipated by AAPA. Furthermore, features recited in these claims are unpatentable over AAPA in view of Gendron. See Office action, paragraph 11.

9. In view of the foregoing discussion, the Examiner maintains that the rejections are proper and thus repeated hereinafter for Applicants' convenience.

***Claim Rejections – 35 U.S.C. § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-4, 8-9, 10-13, 17-18, 19, 21 and 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by Applicant's Admitted Prior Art (AAPA).

**Claims 1, 10, 21 and 22**

The AAPA discloses at least:

*preparing a base software package for each of the one or more regions, wherein the software package preparation is capable of being based on: (i) policy data indicating which of the one or more regions are candidates for receiving the software package, (ii) dependency information indicating requisites for a service provided by the software package, and (iii) configuration information for each of the candidate regions (see at least Figure 1, step 1 and related discussion in the specification);*

*distributing the base software package to each of the candidate regions of the distributed network (see at least Figure 1, step 5 and related discussion in the specification);*

*customizing the base software package received at each of the candidate regions, wherein the software package customization is capable of being based on: (i) regional distribution policies, (ii) dependency information specific to one or more role performed by the target machines in that region, and (iii) individual target machine configuration information (see at least Figure 1, step 6 and related discussion in the specification); and*

*distributing the software package customized in each of the candidate regions to at least one of the target machines in the candidate regions of the distributed network (see at least Figure 1, step 6 and related discussion in the specification).*

### **Claims 2 and 11**

Since the Office's interpretation of claim 1 does not give weight to the limitation (ii) because of how the claim is being written (see section 8 above), the art rejection of features of claims 2 and similar claim 11 is not considered. However, it is noted that although AAPA does not specifically disclose *wherein the dependency information indicating requisites for a service provided by the software package comprises at least one of a pre-requisite, an ex-requisite and a co-requisite associated with installation of the software package on a target machine*, these features are deemed to be inherent in AAPA as shown in Figure 1, steps 1, 2, 3 and item 16, and related discussion in the specification.

### **Claims 3 and 12**

Since the Office's interpretation of claim 1 does not give weight to the limitation (ii) because of how the claim is being written (see section 8 above), the art rejection of features of claims 3 and similar claim 12 is not considered. Furthermore, assuming *arguendo*, that these features are being given weight, it is noted that although AAPA does not specifically disclose *wherein the dependency information indicating requisites for a service provided by the software package is represented in the form of a multi-level tree*, this feature is deemed to be inherent in AAPA as shown in Figure 1, steps 1, 2, 3 and item 16, and related discussion in the specification.

### **Claims 4 and 13**

Since the Office's interpretation of claim 1 does not give weight to the limitation (ii) because of how the claim is being written (see section 8 above), the art rejection of features of claims 4 and similar claim 13 is not considered. Furthermore, assuming *arguendo*, that these features are being given weight, it is noted that although AAPA does not specifically disclose *wherein one or more of leaves of the tree represent one or more software components*, this feature is deemed to be inherent in AAPA as shown in Figure 1, steps 1, 2, 3 and item 16 and related discussion in the specification.

### **Claims 8 and 17**

AAPA further discloses *the step of maintaining a policy repository indicating steps needed to construct distributable component packages for different regions and different end user environments* (see at least Figure 1, step 3 and item 16; and related discussion in the specification).

### **Claims 9 and 18**

AAPA further discloses *wherein the individual target machine configuration information used to customize the base software package received at a candidate region is one of stored prior to use and determined at the time of use* (see at least Figure 1, step 2 and related discussion in the specification).

### **Claim 19**

AAPA further discloses *one or more repositories for storing the policy data indicating which of the one or more regions are candidates for receiving the software package, the dependency information indicating requisites for a service provided by the software package, and the configuration information for each of the candidate regions* (see at least Figure 1, item 16 and related discussion in the specification).

***Claim Rejections – 35 USC § 103***

12. The following is a quotation of the 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 5, 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA as applied to the base claims, in view of U.S. Patent No. 6,484,247 to Gendron et al. (“Gendron”).

**Claims 5 and 14**

AAPA does not specifically disclose *wherein the one or more roles performed by the target machines in a region comprise a client role, a server role and a standalone role*. However, Gendron discloses a network that can contain any combination of client and server systems and the nodes inside this network can be standalone systems (5:59 – 6:8) for the purpose of improving the installation of software installation in a network system. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine this feature with AAPA for the purpose set forth above.

**Claim 20**

AAPA further discloses *one or more repositories for storing the regional distribution policies, the dependency information specific to one or more roles performed by the target machines in the region server, and the individual target machine configuration information* (see at least Figure 1, item 16 and related discussion in the specification).

**Conclusion**

14. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Hoang-Vu A Nguyen-Ba whose telephone number is (571) 272-3701. The examiner can normally be reached on Tuesday-Friday, 6:00 – 16:30.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Tuan Dam can be reached at (571) 272-3695.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**ANTONY NGUYEN-BA  
PRIMARY EXAMINER**

Art Unit 2122

December 23, 2004